No. SC87205

IN THE SUPREME COURT OF THE STATE OF MISSOURI

DAVID NELSON,
Appellant,
V.
DENNIS CRANE, SHERIFF
OF CALLAWAY COUNTY, MISSOURI,
Respondent.

Appeal from the Circuit Court of Callaway County, Missouri
The Thirteenth Judicial Circuit
The Honorable Ellen S. Roper, Judge

RESPONDENT'S BRIEF

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JURISDICTIONAL STATEMENT

Appellant challenges the validity of Section 571.090.1(6), RSMo and of the Civil Detention Procedures of Chapter 632, RSMo., which were interpreted by the Callaway County Sheriff and Callaway County Circuit Court to result in the denial to appellant of a permit to acquire a concealable firearm. Article V, Section 3 of the Missouri Constitution vests jurisdiction of cases involving the validity of a statute of this state in the supreme court.

STATEMENT OF FACTS

Respondent adopts appellant's statement of facts.

POINTS RELIED ON

I

THE TRIAL COURT DID NOT ERR IN RULING THAT RESPONDENT'S DENIAL OF A PERMIT TO ACQUIRE A CONCEALABLE FIREARM TO APPELLANT DID NOT VIOLATE APPELLANT'S CONSTITUTIONAL RIGHTS, BECAUSE APPELLANT'S RIGHT TO BEAR ARMS IS SUBJECT TO REASONABLE REGULATION, IN THAT THE LEGISLATURE ESTABLISHED A REASONABLE PROCESS FOR PERSONS TO RECEIVE PERMITS TO ACQUIRE CONCEALABLE FIREARMS; AND THE TRIAL COURT DID NOT ERR IN RULING THAT SAID PERMIT DENIAL DID NOT VIOLATE APPELLANT'S RIGHT TO DUE PROCESS, BECAUSE APPELLANT ENJOYED DUE PROCESS IN BOTH THE PERMIT PROCESS AND HIS INVOLUNTARY CIVIL COMMITMENT PROCESS, IN THAT THE PERMIT PROCESS INVOLVES STRICT CONDITIONS UNDER WHICH A SHERIFF MUST ISSUE SUCH A PERMIT, WITH PROVISIONS FOR APPEAL OF THAT DECISION, AND IN THAT THE INVOLUNTARY CIVIL COMMITMENT PROCESS IS ADEQUATE TO PROTECT THE RIGHTS OF THE COMMITTED PERSON AS WELL AS THOSE OF SOCIETY.

Brooks v. State, 128 S.W.3d 844 (Mo. banc 2004)

City of Cape Girardeau v. Joyce, 884 S.W.2d 33 (Mo.App.E.D. 1994)

State ex rel. Williams v. Marsh, 626 S.W.2d 223 (Mo. banc 1982)

Section 571.090, RSMo.

II

THE TRIAL COURT DID NOT ERR IN UPHOLDING THE SHERIFF'S DENIAL OF A PERMIT TO OBTAIN A CONCEALABLE FIREARM, IN THAT APPELLANT WAS NOT QUALIFIED FOR SUCH A PERMIT UNDER SECTION 571.090.1(6), RSMO, BECAUSE HIS "ORDER FOR 96 HOUR DETENTION, EVALUATION AND TREATMENT AND WARRANT' ESTABLISHED THAT HE HAD BEEN "COMMITTED" TO A MENTAL HEALTH FACILITY.

Butler v. Mitchell-Hugeback, Inc., 895 S.W.2d 15 (Mo. banc 1995)

Hemeyer v. KRCG-TV, 6 S.W.3d 880 (Mo. banc 1999)

Sections 632.300-632-475, RSMo.

Section 571.090, RSMo.

Black's Law Dictionary, fifth ed. (1979)

Webster's Third New International Dictionary (1981)

ARGUMENT

THE TRIAL COURT DID NOT ERR IN RULING THAT RESPONDENT'S DENIAL OF A PERMIT TO ACQUIRE A CONCEALABLE FIREARM TO APPELLANT DID NOT VIOLATE APPELLANT'S CONSTITUTIONAL RIGHTS, BECAUSE APPELLANT'S RIGHT TO BEAR ARMS IS SUBJECT TO REASONABLE REGULATION, IN THAT THE LEGISLATURE ESTABLISHED A REASONABLE PROCESS FOR PERSONS TO RECEIVE PERMITS TO ACQUIRE CONCEALABLE FIREARMS; AND THE TRIAL COURT DID NOT ERR IN RULING THAT SAID PERMIT DENIAL DID NOT VIOLATE APPELLANT'S RIGHT TO DUE PROCESS, BECAUSE APPELLANT ENJOYED DUE PROCESS IN BOTH THE PERMIT PROCESS AND HIS INVOLUNTARY CIVIL COMMITMENT PROCESS, IN THAT THE PERMIT PROCESS INVOLVES STRICT CONDITIONS UNDER WHICH A SHERIFF MUST ISSUE SUCH A PERMIT, WITH PROVISIONS FOR APPEAL OF THAT DECISION, AND IN THAT THE INVOLUNTARY CIVIL COMMITMENT PROCESS IS ADEQUATE TO PROTECT THE RIGHTS OF THE COMMITTED PERSON AS WELL AS THOSE OF SOCIETY.

United States Constitution Second Amendment

Appellant's reliance on the Second Amendment of the United States Constitution is misplaced.

When Jack Miller was charged with illegal transportation of a short-barreled shotgun from Claremore, Ok., to Siloam Springs, Ark., the United States Supreme Court had to answer the question whether that federal prosecution infringed on Mr. Miller's Second Amendment right. Its response was:

> In the absence of any evidence tending to show that possession or use of a 'shotgun having a barrel of less than eighteen inches in length' at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. United States v. Miller, 307 U.S. 174, 178 (1939).

Since 1939, Miller has stood for the proposition that the Second Amendment right "to keep and bear arms" relates to the keeping and bearing so that the keeper may bear as a member of a state militia.

This proposition has been stated more recently and more locally in United States v. Pfeifer, 371 F.3d 430, 438 (C.A.8, 2004): "the Second

Amendment does not guarantee the right to possess a firearm unless the firearm has some reasonable relationship to the maintenance of a militia." As with Mr. Pfeiffer, Mr. Nelson "made no such assertion in this case, nor would the record support one." Id.

Missouri Constitution Article I, Section 23

If the Missouri Constitution tracked the U.S. Constitution in this regard, the inquiry would end here. Missouri's Constitution does not seem to limit the right to keep and bear arms to militia-related use, though, when its Article I, Section 23 states:

> That the right of every citizen to keep and bear arms in defense of his home, person and property, or when lawfully summoned in aid of the civil power, shall not be questioned; but this shall not justify the wearing of concealed weapons.

This court has not been called upon to address an issue similar to that raised by Mr. Nelson under Article I, Section 23 of the Constitution and Section 571.090, RSMo.

A challenged statute is presumed to be constitutional, State ex rel. Williams v. Marsh, 626 S.W.2d 223, 228 (Mo. banc 1982), the burden being on the challenger to show the statute unreasonable, id. at 232. That is '"an extremely heavy burden,"' such that "(t)he Court will not invalidate a statute

'unless it clearly and undoubtedly contravenes the constitution' and 'plainly and palpably affronts fundamental law embodied in the constitution.'" Linton v. Missouri Veterinary Medical Board, 988 S.W.2d 513, 515 (Mo. banc 1999). 'This presumption of constitutionality compels us to "adopt any reasonable reading of the statute that will allow its validity and to resolve all doubts in favor of constitutionality (citations omitted)."' State ex rel. Hilburn v. Staeden, 91 S.W.3d 607, 609 (Mo. banc 2002).

When the constitutionality of the recently enacted concealed-carry law was challenged, this court held: "the General Assembly, which has plenary power to enact legislation on any subject in the absence of a constitutional prohibition (citation omitted), has the final say in the use and regulation of concealed weapons." Brooks v. State, 128 S.W.3d 844, 847 (Mo. banc 2004).

"Nothing in the Missouri constitution limits the power of the legislature to enact laws pertaining to the time, place and manner of carrying weapons." City of Cape Girardeau v. Joyce, 884 S.W.2d 33, 35 (Mo.App.E.D. 1994). Citing other states' law, the same court said, "To prohibit certain persons who by their previous conduct have demonstrated their unfitness to acquire a concealable firearm is in the interest of the citizens' safety and welfare and is within the scope of the State's police

power," in Heidbrink v. Swope, 170 S.W.3d 13, 15 (2005). It concluded: "Further, requiring persons to obtain a permit is a reasonable method for the state to exercise this police power." Id. "The right to keep and bear arms does not trump the State's police power… Missouri courts have already held that the legislature may reasonably regulate the right to keep and bear arms." Id. at 16.

"Reasonably regulate" is exactly what Section 571.090, RSMo does. It requires a person to obtain a permit before acquiring a concealable firearm, which is a "firearm with a barrel less than sixteen inches in length," Section 571.010.(3), RSMo. It does not prohibit Mr. Nelson from acquiring every kind of firearm. Without a permit, he can acquire a shotgun or a rifle or a handgun with a barrel sixteen inches long or longer.

Section 571.090, RSMo does not violate Article I, Section 23 of the Missouri Constitution.

Due Process under Section 571.090, RSMo

The proceeding on appeal is the Circuit Court's denial (L.F. 24) of Mr. Nelson's appeal in a trial de novo (L.F. 22) of a small claims court decision (L.F. 5) upholding the sheriff's refusal to grant a permit to acquire a concealable firearm (L.F. 15) on Mr. Nelson's application for such a permit (L.F. 14).

The recitation of the steps taken to get here alone confirms that Mr. Nelson has enjoyed due process in his frustrated pursuit of a permit.

The sheriff based his denial on the fact "on 9-11-03 was committed to Mid-Mo Mental Health facility on 96-hour court order commit." (L.F. 9).

Section 571.090, RSMo sets out the application procedure, the qualifications based on which the sheriff is required to issue a permit, a provision to notify an applicant of his right to appeal the sheriff's denial, the right to a trial in small claims court and the right to appeal for a trial de novo in circuit court.

Section 571.090, RSMo provides the notice and opportunity to be heard required by Article I, Section 10 of the Missouri Constitution and the Fourteenth Amendment to the United States Constitution, as interpreted in cases such as Moore v. Board of Education of Fulton Public School No. 58, 836 S.W.2d 943, 947 (Mo. 1992).

Due process under Civil Detention Procedures

Appellant claims in his appeal through the process of Section 571.090, RSMo, not so much that he has been denied due process in his application for a permit to acquire a concealable firearm but that he had been denied due process in a 2003 proceeding in which he was ordered taken into custody for detention, evaluation and treatment.

Appellant did not challenge his 2003 commitment at the time. He does not deny the judicial finding of "probable cause to believe that the respondent (David Nelson) has a mental disorder and presents a likelihood of serious harm to respondent (David Nelson) or others." L.F. 17.

The question becomes whether the review of the Section 571.090, RSMo proceeding is the forum for review of the Chapter 632 proceeding from a couple of years before. Whatever effect the Chapter 632 proceeding had on the Section 571.090 issue is a collateral consequence of a court proceeding long since concluded without any indication of complaint by Mr. Nelson.

The time to challenge the constitutionality of the involuntary civil commitment would have been in 2003, not two years later in a collateral proceeding. It is fundamental that "constitutional issues must be raised at the first available opportunity." Hopkins v. Hopkins, 626 S.W.2d 389, 394 (Mo.App.E.D. 1981). Mr. Hopkins did not challenge the constitutionality of the statute under which he was ordered to pay maintenance when his dissolution was granted but tried to challenge it when he was held in contempt. That was too late, the court held. Similarly, Mr. Nelson did not challenge the constitutionality of his involuntary commitment immediately

after it was ordered but tried to challenge it in a subsequent proceeding, also too late.

The legal file discloses an application for an order to detain Mr. Nelson (L.F. 18) and the order (L.F. 17) reciting that the court took up the application with the applicant present, Mr. Nelson not present and, "(t)he court having heard and examined the evidence submitted finds that … there is probable cause to believe that the respondent has a mental disorder and presents a likelihood of serious harm to respondent or others."

The search for earlier consideration by this court of analogous case law has led to State ex rel. Williams v. Marsh, supra, in which this court found that The Adult Abuse Act, Sections 455.010-455.085, RSMo. 1980 was constitutional.

In that case the court considered three points of due process analysis used by the United States Supreme Court: the private interest affected; the governmental interest to be balanced against the private interest; and adequacy of procedural safeguards. Id. at 230-231.

Following that analysis, the court found that The Adult Abuse Act complied: "The Act is directly necessary to secure important governmental interests…; … prompt action is necessary …; … government has kept strict control over its powers." Id. at 232. The involuntary civil commitment

procedure is similar to The Adult Abuse Act: in that the liberty interest of the person to be held is a significant interest; in that immediate action is necessary to enforce the important governmental interest, the protection of victims of the violent mentally ill, as well as the protection of the self-destructive mentally ill person; and in that the government has kept strict control over the process by allowing involuntary detention orders only after evidence has been submitted, if only by affidavit, to a neutral magistrate, who can enter the order only upon specific findings that the respondent may be suffering from a mental disorder and presents a likelihood of serious harm to himself or others. Section 632.305.2, RSMo.

Both the Civil Detention Procedures of Sections 632.300, et seq, RSMo, and The Adult Abuse Act involve ex parte petitions to the court for immediate issuance of an order aimed at protecting the physical well-being of certain citizens by infringing on the rights of the respondents. Noting that "States also have been given deference in adopting reasonable summary procedures when acting under their police power," Id. at 231, this court found, "The interests and procedures considered, these ex parte order provisions comply with due process requirements because they are a reasonable means to achieve the state's legitimate goal of preventing

domestic violence, and afford adequate procedural safeguards, prior to and after any deprivation occurs." Id. at 232.

Under this analysis, the Civil Detention Procedures should be upheld.

The difference comes in appellant's complaint that he suffers a perpetual denial of his right to keep and bear arms from the ex parte civil commitment, whereas the ex parte adult abuse order does not have that long-term effect.

If, in the exercise of its police power, the legislature wanted to limit the impact of an involuntary civil commitment as far as permits to acquire concealable firearms are concerned to commitments of up to 21 days or longer obtained only after a hearing with notice and opportunity to be heard afforded both sides (Section 632.330, RSMo), it could have acted as it did in the 2003 adoption of Section 571.101.2.(10), RSMo, cum. supp. 2005, which prohibits from receiving a concealed carry endorsement anyone who is "the respondent of a valid full order of protection which is still in effect."

The legislature has not chosen to do that, but apparently has been satisfied to keep its involuntary civil detention procedures as they are and to keep its permit to acquire a concealable firearm statutes as they are.

It should not escape note that Mr. Nelson was ordered into a mental hospital on the basis of evidence that, with a gun in his possession, he

"stated he wanted to kill himself by putting a bullet in his head, stated he jus(t) wanted to be left alone and die, stated he has no reason to live." L.F. 18. The governmental interest in getting such a troubled person to mental health treatment was significant.

It is reasonable for the legislature to decide that a sheriff should deny a permit to acquire a concealable firearm to an applicant after a judge has found even probable cause to believe that applicant "has a mental disorder and presents a likelihood of serious harm" to himself or others. L.F. 17, Section 632.305.2, RSMo.

As in the area of domestic violence, in the area of civil detention of the mentally ill, the state has a legitimate goal of preventing violence, it affords adequate procedural safeguards prior to and after the deprivation occurs, and the procedures are a reasonable means to achieve the legitimate goal.

II

THE TRIAL COURT DID NOT ERR IN UPHOLDING THE SHERIFF'S DENIAL OF A PERMIT TO OBTAIN A CONCEALABLE FIREARM, IN THAT APPELLANT WAS NOT QUALIFIED FOR SUCH A PERMIT UNDER SECTION 571.090.1(6), RSMO, BECAUSE HIS "ORDER FOR 96 HOUR DETENTION, EVALUATION AND TREATMENT AND WARRANT' ESTABLISHED THAT HE HAD BEEN "COMMITTED" TO A MENTAL HEALTH FACILITY.

Callaway County Sheriff Dennis Crane should not have issued a permit to acquire a concealable firearm to David Nelson, because Mr. Nelson had "been committed to a mental health facility," and was thus barred under Section 571.090.1.(6), RSMo.

Mr. Nelson claims that he was never "committed" to a mental health facility, only ordered "detained" in one.

If the General Assembly had made it clear that "commitment" was one way to be placed in a Missouri Department of Mental Health hospital and "detention" was another, Mr. Nelson might succeed in this argument. It might even be argued that each word should have a separate meaning. But that argument for that distinction is absent from the statutes which Sheriff Crane, Associate Circuit Judge Joe Holt and Circuit Judge Ellen Roper had

to apply when Mr. Nelson sought a permit, appealed its denial to small claims court and appealed his loss there to Circuit Court.

The only conclusion to draw from the law is that Judge Roper was correct when she found '[t]he term "commitment" … is synonymous with the term "detention"…' L.F. 24.

This court reviews this court-tried case under the canon of Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. banc 1976) such that: "The judgment of the trial court will be sustained unless there is no substantial evidence to support it, unless it is against the weight of the evidence, or unless it erroneously declares or misapplies the law." Because the facts were stipulated at trial, "the only question before the Court is whether the trial court drew the proper legal conclusions from the facts stipulated." Sheldon v. Bd. Of Tr. Of Pol. Ret. Sys., 779 S.W.2d 553, 554 (Mo. banc 1989).

Appellant had been ordered into Mid-Missouri Mental Health Center for detention, evaluation and treatment by a Callaway County Circuit Court probate division order of September 11, 2003. L.F. 17. On April 27, 2005, he applied for a permit for acquisition of a firearm, L.F. 14, which application was denied, L.F. 15, leading to appellant's appeal to small claims court, circuit court and this court.

Permits to acquire concealable firearms are available to a person who, among other things, "has not been committed to a mental health facility, as defined in section 632.005, RSMo." Section 571.090.1.(6), RSMo. Chapter 571, RSMo, does not provide us a definition of "committed."

The reference in Section 571.090.1.(6), RSMo, to a definition found in Chapter 632, RSMo, might suggest looking to that chapter for a definition of "committed," but it is only the "mental health facility" definition which is found there. Rather, it suggests that the writers of the Chapter 571, RSMo, sections pertaining to permits to acquire a concealable firearm thought the Chapter 571 subject matter related to the Chapter 632 subject matter of civil detention procedures for the mentally ill.

For appellant to prevail, it must be clear that Judge Roper erroneously declared or misapplied the law when she found the terms "commitment" and "detention" synonymous. L.F. 24.

With the idea in mind that "(t)he meaning of a word must depend to some extent on the context in which it appears," Butler v. Mitchell-Hugeback, Inc., 895 S.W.2d 15, 19 (Mo. banc 1995), we look through the Civil Detention Procedures statutes.

These statutes of Sections 632.300-632.475, RSMo. use the two terms interchangeably. Though "detain," "detained," and "detention" are the most

often used terms in the statute, the legislature's use of "commitment" to describe the same act or order shows that Judge Roper did not erroneously apply the law.

Section 632.305.1, RSMo sets out the procedure of "(a)n application for detention for evaluation and treatment." Section 632.330, RSMo, goes to the step "(a)t the expiration of the ninety-six hour period" of "a petition for a twenty-one day inpatient involuntary detention and treatment period." Section 632.335.1, RSMo, continues referencing "detention and treatment not to exceed twenty-one days." Section 632.340.1, RSMo, sets out that "(b)efore the expiration of the twenty-one-day inpatient detention and treatment period …, the court may order the respondent to be detained and treated involuntarily for an additional period not to exceed ninety inpatient days …"

The hearing for the "ninety-day inpatient detention and treatment" order is the subject of Section 632.350, RSMo. Then Section 632.355, RSMo, references "the ninety-day inpatient commitment period" in subsection one and "the ninety-day commitment period" in subsection 2 before moving on to mention an order "that the respondent be detained for involuntary treatment … for a period not to exceed one year …" in subsection 3.

"(D)etention" and "detained" are the words of Sections 632.360 and 632.365, RSMo.

Section 632.370.1, RSMo, demonstrates the interchangeable use of the words in its first sentence when it mentions patients "detained under this chapter, chapter 211, RSMo, chapter 475, RSMo, or chapter 552, RSMo." in that a person may be considered "detained" under any of those chapters. A few sentences later, the same subsection states: "The head of the mental health program shall notify the court ordering detention or commitment … and if the person was committed pursuant to chapter 552, RSMo, to the prosecuting attorney …" So, the same subsection talks of patients "detained" under chapters 211 and 552, RSMo, and then applies to persons "committed under chapters 211 and 552, RSMo.

Section 632.375, RSMo sets out that each person "detained" for a year under this chapter is to be evaluated every one hundred eighty days, with a report and a hearing to be had, at the conclusion of which one option for the court is to order "(t)he respondent to be remanded to the mental health program for the unexpired portion of the original commitment order." Section 632.375.2.(3), RSMo.

Section 632.392.1, RSMo pertains to "a patient who was committed or who is civilly detained," and Section 632.400, RSMo uses the words

"detained" and "detention" regarding the ninety-day and one-year periods of involuntary treatment.

Each of these sections of Chapter 632 – except Section 632.392.1, RSMo – is, as far as the point before the court is concerned, in the same form as it was when the General Assembly adopted them together as a part of H.B. 1724 in 1980. The legislature should be presumed to have known what it was doing when it wrote the statute, with its interchangeable use of the words "commit" and "detain."

When the statute in question does not define a questioned term, this Court relies on the plain and ordinary meaning of the word, as derived from the dictionary. Hemeyer v. KRCG-TV, 6 S.W.3d 880, 881 (Mo. banc 1999). The definitions provided by Webster's Third New International Dictionary (1981)[1] and Black's Law Dictionary, fifth ed. (1979)[2] for "commit" and

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[1] Commit – "1a: to put into charge or keeping: give in trust: entrust, … b(1): to place in or send officially to confinement or other place of punishment … (2) to consign legally to a mental institution."

Detain – "1: to hold or keep in or as if in custody."

[2] Commit - (second definition) "To send a person to prison by virtue of a lawful authority, for any crime or contempt, or to a mental health facility, workhouse, reformatory, or the like, by authority of a court or magistrate."

"detain" indicate the correctness of the trial court's decision, in that "commitment" is the proceeding or order by which the court directs the "detention" or holding of a person to occur.

The mixed use of "commitment" and "detention" in Chapter 632, RSMo, had been in place for five years when the General Assembly made some revision to that chapter in S.S.S.B. 265 in 1985, when it adopted language in Section 552.040, RSMo which reemphasizes that the legislature was content with using the words synonymously. The language in that bill at Section 552.040.14, which is now found in Section 552.040.15, RSMo, mentions "a facility where a committed person is being detained." That statute has since been revised, with no effort to separate the concept of "commitment" from the concept of "detention."

Rather than use the word "commitment" for longer-term mental health treatment, Section 552.050.1, RSMo, speaks to ninety-six hour detentions of Department of Corrections inmates which may be followed by "involuntary detention and treatment pursuant to chapter 632, RSMo."

Detain – "to retain as the possession of personalty. To arrest, to check, to delay, to hinder, to hold or keep in custody, to retard, to restrain from proceeding, to stay, to stop."

Appellant argues that "commitment" refers "to the results obtained by and through due process," App. Brief 22. The inference is that "detention" must mean something lacking in due process.

This argument applies better to the way appellant thinks things should be than to the way things are. It may be a good idea for the legislature to distinguish "detention" from "commitment" by allowing for "detention" in certain situations and adding requirements before there can be a "commitment," but that is not what the legislature has done. This court can work only with the words given it by the legislature. If the legislature wishes to amend the statutes to separate the meanings of these two words, it can, but, as it has written the law, they share a common meaning, and it is not this court's job to apply definitions which the legislature did not clearly intend.[3]

[3] The use of different words to mean the same thing in Chapter 632 is not the only such statutory synonymy in this case. See the Appendix for portions of Section 571.090, RSMo, with the synonymously used words "deny" and "refuse" and their derivatives highlighted. The legislature could have given "denial" one meaning in the statute and "refusal" another. Despite an appearance early in the statute that "refusal" pertained to a refusal to make a

Judge Holt and then Judge Roper in the trial de novo followed the law as given by the General Assembly in upholding the sheriff's denial of Mr. Nelson's application to obtain a concealable firearm, and Judge Roper's judgment should be affirmed.

CONCLUSION

The trial court correctly found that appellant's rights to bear arms and due process were not violated in the denial to him of a permit to acquire a particular kind of firearm, one concealable with a barrel of less than 16 inches, and that "commitment" and "detention" as used in the pertinent sections of the statutes bear the same meaning. The trial court judgment, therefore, should be affirmed.

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decision either to grant or to decline to grant rather than a refusal to issue the permit, the terms are used interchangeably by the end of the statute.

CERTIFICATE OF SERVICE

The undersigned certifies that two copies of this document and a floppy disk copy were served by delivery to the office of Geoffrey W. Preckshot, 28 N. 8th St., Columbia, Missouri on the 17th day of February, 2006.

The undersigned further certifies that the brief complies with the limitations contained in Supreme Court Rule 84.06(b) and that it contains 4,812 words.

The undersigned further certifies that the disk accompanying this brief has been scanned for viruses and that it is virus-free.

_____

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APPENDIX

***571.090*. Permit to acquire concealable weapon, requirements, contents — sheriff to issue, when, fee — ineligible persons — denial of permit, content — appeal procedure, form — violation, penalty. —**

1. A permit to acquire a concealable firearm shall be issued by the sheriff of the county in which the applicant resides, if all of the statements in the application are true, and the applicant:

(1) Is at least twenty-one years of age, a citizen of the United States and has resided in this state for at least six months;

(2) Has not pled guilty to or been convicted of a crime punishable by imprisonment for a term exceeding one year under the laws of any state or of the United States other than a crime classified as a misdemeanor under the laws of any state and punishable by a term of imprisonment of two years or less that does not involve an explosive weapon, firearm, firearm silencer or gas gun;

(3) Is not a fugitive from justice or currently charged in an information or indictment with the commission of a crime punishable by imprisonment for
a term exceeding one year under the laws of any state or of the United States other than a crime classified as a misdemeanor under the laws of any state and punishable by a term of imprisonment of two years or less that does not involve an explosive weapon, firearm, firearm silencer or gas gun;

(4) Has not been discharged under dishonorable conditions from the United States armed forces;

(5) Is not publicly known to be habitually in an intoxicated or drugged condition; and

(6) Is not currently adjudged mentally incompetent and has not been

committed to a mental health facility, as defined in section **632.005**, RSMo, or a similar institution located in another state.

2. Applications shall be made to the sheriff of the county in which the applicant resides. An application shall be filed in writing, signed and verified by the applicant, and shall state only the following: the name, Social Security number, occupation, age, height, color of eyes and hair, residence and business addresses of the applicant, the reason for desiring the permit, and whether the applicant complies with each of the requirements specified in subsection 1 of this section.

3. Before a permit is issued, the sheriff shall make only such inquiries as he deems necessary into the accuracy of the statements made in the application. The sheriff may require that the applicant display a Missouri operator's license or other suitable identification. The sheriff shall issue the permit within a period not to exceed seven days after submission of the properly completed application excluding Saturdays, Sundays or legal holidays.

The sheriff may **refuse** to issue the permit if he determines that any of the requirements specified in subsection 1 of this section have not been met, or if he has reason to believe that the applicant has rendered a false statement regarding any of the provisions in subsection 1 of this section. If the application is approved, the sheriff shall issue a permit and a copy thereof to the applicant.

4. The permit shall recite the date of issuance, that it is invalid after thirty days, the name and address of the person to whom granted, the nature of the transaction, and a physical description of the applicant. The applicant shall sign the permit in the presence of the sheriff.

5. If the permit is used, the person who receives the permit from the applicant shall return it to the sheriff within thirty days after its expiration, with a notation thereon showing the date and manner of disposition of the firearm and a description of the firearm including the make, model and serial number. The sheriff shall keep a record of all applications for permits, his action thereon, and shall preserve all returned permits.

6. No person shall in any manner transfer, alter or change a permit, or

make a false notation thereon, or obtain a permit upon any false representation, or use, or attempt to use a permit issued to another.

7. For the processing of the permit, the sheriff in each county and the city of St. Louis shall charge a fee not to exceed ten dollars which shall be paid into the treasury of the county or city to the credit of the general revenue fund.

8. In any case when the sheriff **refuses** to issue or to act on an application for a permit, such **refusal** shall be in writing setting forth the reasons for such **refusal**. Such written **refusal** shall explain the ***denied*** applicant's right to appeal and, with a copy of the completed application, shall be given to the ***denied*** applicant within a period not to exceed seven days after submission of the properly completed application excluding Saturdays, Sundays or legal holidays. The ***denied*** applicant shall have the right to appeal the ***denial*** within ten days of receiving written notice of the denial. Such appeals shall be heard in small claims court as defined in section **482.300**, RSMo, and the provisions of sections **482.300**, **482.310** and **482.335**, RSMo, shall apply to such appeals.

9. A ***denial*** of or refusal to act on an application for permit may be appealed by filing with the clerk of the small claims court a copy of the sheriff's written **refusal** and a form substantially similar to the appeal form provided in this section. Appeal forms shall be provided by the clerk of the small claims court free of charge to any person:

SMALL CLAIMS COURT

In the Circuit Court of _____ Missouri

Case Number _____

_____, ***Denied*** Applicant)
)
vs.)
)
_____, Sheriff)

Return Date _____

DENIAL OF PERMIT APPEAL

The denied applicant states that his properly completed application for a permit to acquire a firearm with a barrel of less than sixteen inches was ***denied*** by the sheriff of _____ County, Missouri, without just cause. The ***denied*** applicant affirms that all of the statements in the application are true.

_____

Denied Applicant

10. The notice of appeal in a ***denial*** of permit appeal shall be made to the sheriff in a manner and form determined by the small claims court judge.

11. If at the hearing the person shows he is entitled to the requested permit, the court shall issue an appropriate order to cause the issuance of the permit. Costs shall not be assessed against the sheriff in any case.

12. Any person aggrieved by any final judgment rendered by a small claims court in a ***denial*** of permit appeal may have a trial de novo as provided in sections **512.180** to **512.320**, RSMo.

13. Violation of any provision of this section is a class A misdemeanor.